WORKING PAPER

Working Paper No.58

The MRTP, Act, 1969 and Concentration of Economic Power

by

Padmini Swaminathan

MADRAS INSTITUTE OF DEVELOPMENT STUDIES
79, SECOND MAIN ROAD, GANDHINAGAR, ADYAR
MADRAS 600 020

Working Paper No.58

The MRTP, Act, 1969 and Concentration of Economic Power

by

Padmini Swaminathan

MADRAS INSTITUTE OF DEVELOPMENT STUDIES

79, Second Main Road, Gandhinagar,

Adyar, MADRAS 600 020

June 1985

Acknowledgements

I am grateful to

Messers C.T.Kurien, S.Guhan, Nasir Tyabji and M.N.Sivasubramaniam for their comments and suggestions on an earlier draft of this paper. Needless to state that errors and omissions are wholly the author's responsibility.

Mr.V.Ramalingam for typing the earlier draft.

Mr.J.Robinson for typing this paper.

Mr.V.Mohan for cyclostyling this paper.

The MRTP Act 1969 and Concentration of Economic Power

Abstract

Our attempt in this paper is an examination of the major findings of the MRTPC in matters relating to concentration of economic power and monopolistic and restrictive trade practices. Notwithstanding the limited coverage of the corporate sector by the MRTP Act, 1969, a good volume of material is available on various aspects of the functioning of the corporate sector which inadvertently helps us not only in assessing the impact of the MRTP Act, 1969 on the "concentration of economic power" but more important gives a glimpse of the structural set up of the Indian industrial sector.

******

The MRTP, Act, 1969 and Concentration of Economic Power

Our study of Product-Concentration in Indian Industry both in terms of output[1/] and in terms of productive capacity[2/] has revealed that:

a) The entry of the Public Sector being confined in a large measure to the "Basic Industry Category" has not had a significant impact on concentration in production by the Private Sector. Leading producers in the private sector do still have considerable shares in production which makes concentration in production a stable phenomenon.

b) Since decisions regarding interconnections between undertakings are taken strictly in accordance with the existing statutory provision as laid down in the MRTP Act, 1969, companies can escape the charge of interconnection, merely by reducing their share holding to slightly less than the minimum stipulated in the Act. The implication for product concentration (in the light of such interlinkages between companies producing the same product) are grave, since, while appearing to be competitive on paper, these enterprises would infact be controlling the bulk of the market.

c) Apart from Monopoly Houses not registering a number of undertakings interconnected with them, there are any number of companies belonging to identifiable family groups that have successfully managed to stay out of the provisions of the MRTP Act, 1969. Consequently, our data is an under-estimation of the hold of Business-Houses in production.

Indian industrial development in the post independent phase has been largely 'regulated' through legislations and official pronouncements on industrial policy from time to time. The pattern and growth of industrial development over the last thirty years has been governed by the Industrial Policy Resolution of 1956. It envisaged speedy industrialisation with particular emphasis on the development of heavy

and machine building industries and a predominant role to the public sector. Several other objectives were also enunciated such as the complementary role of the small-scale sector, regional dispersal, prevention of growth of private monopolies and concentration of economic power. This latter objective was sought to be achieved, among other measures, through the provisions of the MRTP Act, 1969.

The Act envisaged the appointment of a Monopolies and Restrictive Trade Practices Commission (MRTPC) to carry out the various provisions of the Act. The MRTPC came into existence in 1970. Two other authorities under the Act, namely, the Registrar of Restrictive Trade Agreements and the Director of Investigation were also appointed. The Commission is headed by a Chairman, who under the provisions of the Act has to be the judge of a High Court or the Supreme Court.

The Act consists mainly of three parts. Chapter III deals with matters relating to concentration of economic power; Chapter IV with monopolistic trade practices; and Chapters V and VI with matters relating to restrictive trade practices.

Our attempt in this paper is not to embark on a detailed clause by clause analysis of the provisions and functioning of the Act in the last fifteen years. Rather our aim is an examination of the major findings of the MRTPC under the three parts mentioned above. Notwithstanding the limited coverage of the corporate sector by the MRTP Act, 1969, a good volume of material is available on various aspects of the functioning of the corporate sector which inadvertently helps us not only in assessing the impact of the MRTP Act, 1969 on the "concentration of economic power" but more important gives a glimpse of the structural set up of the Indian industrial sector.

The plan of the paper is as follows: Section I deals with Chapter III of the MRTP Act, 1969, namely, the chapter dealing with concentration of economic power while Section II deals with cases of monopolistic and restrictive trade practices.

Section I

Chapter III of the MRTP Act, 1969, relates to concentration of economic power. Part A of the chapter defines the undertakings which are required to take permission of the Government for substantial expansion (Section 21), establishment of new undertakings (Section 22) merger/ amalgamation (Section 23 (2)) and acquisition/takeover (Section 23 (4) and 23 (8). Undertakings to which Chapter III of the Act is applicable are defined as:-

"(a) an undertaking if the total value of

i) its own assets, or

ii) its own assets together with the assets of its interconnected undertakings is not less than twenty crores of rupees;

(b) a dominant undertaking:-

i) where it is a single undertaking, the value of its assets, or

ii) where it consists of more than one undertaking the sum total of the value of the assets of all the interconnected undertakings constituting the dominant undertaking is not less than one crore of rupees".[3/]

Undertakings to which the above definitions apply have to register under Section 26 of the MRTP Act, 1969. All the proposals of such undertakings for expansion (more than 25 per cent), establishment of new undertakings,

merger/amalgamation, acquisition/takeover have to be officially approved prior to implementation. If the Central Government is of the opinion that no such approval can be made without further enquiry it may refer the matter to the MRTPC which after such hearings as it thinks fit reports its recommendations to the Central Government. Thus the Central Government may or may not refer the proposals to the MRTPC for the latter's opinion.

If the Central Government is of the opinion that the working of an undertaking registered under the MRTP Act, 1969, is prejudicial to the public interest, or has led, or is leading, or is likely to lead, to the adoption of any monopolistic or restrictive trade practice, it may refer the matter to the MRTPC for an enquiry (under Section 27 of the Act) as to whether it is expedient in the public interest to make an order:-

"(a) for the division of any trade of the undertaking by the sale of any part of the undertaking or assets thereof, or

(b) for the division of any undertakingor interconnected undertakings into such number of undertakings as the circumstances of the case may justify".

If the commission so recommends the Government may direct the division of any trade of the undertakings or of its interconnected undertakings.

Regarding the working of the provisions in Chapter III; it is generally agreed in India that their operation has not succeeded either in preventing further concentration of economic power or in breaking up the existing concentrations. Dr.H.K.Paranjape, a former member of the MRTPC, analysing

the reasons for such a situation emphasised, among others, the following main points.

"Firstly, even though an elaborate definition of interconnected undertakings was provided in the Act, no specific instrument was created for the purpose of examining which undertakings were connected. The commission had powers to obtain information only for the purpose of an enquiry entrusted to or taken up by it under the Act and could not therefore go into the general question of interconnection except in cases referred to it. The Government had wider powers to call for information but adequate machinery was not created by Government and specific efforts were not made vigorously to pursue the question of interconnection------ The result was that one of the main props of the edifice of the M.T.R.P. Act, 1969 was weakened and remained ineffective".4/

"Secondly, the Government issued a classification of goods which was so aggregative in many cases that undertakings which were clearly 'dominant' in the case of particular goods no longer needed to be treated as such. Curiously enough, the result of the classification issued by Government was that some undertakings which had registered themselves on the assumption that they were dominant undertakings because they were shown as such by the Monopolies Inquiry Commission and it was also well known that they dominated a particular product line found it advisable to deregister themselves as, they could no longer be treated as dominant. The result of both these peculiarities in the administration of the Act was that the number of undertakings to which the Act applied was much smaller than was anticipated; and a number of well known monopolistic undertakings could escape the discipline of the MRTP Act".5/

The number of references to the MRTPC in matters relating to expansion, setting up of new undertakings, mergers, amalgamations and take-overs, has been declining year after year. "During the period 1st January 1974 to 30th June 1978, 311 applications out of the total of 336 under Sections 21 and 22 of the Act, that is, 92 per cent were disposed of by the Central Government without reference to the Commission".6/

References to the commission are a matter of discretion on the part of the Government; no clear set of principles or norms have been evolved. Only in the case of industrial explosives a number of similar cases were all referred to the Commission so that they could be examined together. In the case of cement, while the applications of two undertakings of the Birla Group were referred to the commission, similar applications of other large industrial houses and also of some other undertakings belonging to the Birla Group were decided by the Government without reference to the commission. Applications of Telerad for the manufacture of entertainment electronics items were referred to the commission but similar applications of other large houses (e.g. J.K.Electronics) and foreign majority companies (Philips, Gramaphone Company) were not so referred. Applications of India Pistons for the manufacture of auto-ancillaries were referred to the commission but similar applications of other large houses, like Escorts, were approved without reference to the Commission.7/

Apart from a progressive fall in the number of references made to the MRTPC, a more serious lacuna is the absence of a clear-cut set of guidelines which the MRTPC could utilise in evaluating specific proposals from different parties. For instance, Government referred to MRTPC 4 proposals for setting up new undertakings for industrial explosives. Two of them were by foreign majority undertakings and two by

Indian undertakings. The proposals of Indian Explosives Ltd., Maharaja Shree Umaid Mills Ltd., and Wimco Ltd., were rejected by the MRTPC on 30th July 1976 and by the Government on 27th May 1977. The proposals of the first three companies were rejected on the ground that there was no scope for licensing additional capacity for industrial explosives to meet projected demand in the V Plan. The fourth proposal (that of Chowgule and Company) was approved on the ground that 'there is scope for some licensing at this stage to meet projected demand in the 6th Plan Period".[8/] Commenting on the manner of disposal of proposals Rakesh Khurana opines: "How can similar facts be twisted to arrive at different conclusions in proposals of different parties for the same item at the same time?"[9/]

As far as Section 27 is concerned (which empowers the Central Government to make a reference to the Commission to inquire whether it is expedient in the public interest to order division of any trade or of any undertaking or inter-connected undertakings into a number of undertakings), during the 10-year period only two such references were made by the Central Government to the Commission. One of these was regarding the question whether a chemical concern should be separated from its interconnected undertakings in other lines of business such as cotton textiles.[10/] Interestingly, the expansion of this chemical concern had been approved only a few months before this reference was made. The Government was of the 'opinion' that the functioning of the undertaking was detrimental to public interest and asked the MRTPC (in May 1974) to enquire into the case and recommend the division of the undertaking if it was expedient in the public interest. The undertaking filed a writ petition in the High Court of Delhi and got the proceedings stayed.

The second reference received by the MRTPC in December 1975 related to three newspaper companies belonging to the

R.N.Goenka Group. The Central Government formed a *prima facie* opinion that their working was prejudical to public interest. The commission closed the inquiry into the matter in December 1977 after the Central Government rescinded the order of reference to the Commission on the ground that the Central Government had reconsidered the matter in its entirety and it was of the opinion that "the mere fact that profits and other funds of the companies were being utilised in speculative business would, without anything more, not be sufficient ground, for the division of the undertakings".11/

The detailed deliberations undertaken by the MRTPC in the cases referred to it by the Government of India (some of which have been published),12/ reveal how with all the information available to it and knowing full-well the consequences (in terms of increasing concentration and monopolisation of the economy) of granting approval of particular licences, a majority of the MRTPC has granted its sanction, ostensibly on grounds of "merits of the case".

The approval or rejection of particular licences is not our concern here. What we hope to highlight, with an illustration or two is that, the investigations by the MRTPC into those cases referred to it by the Central Government, have thrown up quite a bit of information on the structural characteristics of undertakings/industries, which among other things, explains, the continued domination by particular undertakings over particular fields of activity, and, by business houses over large areas of industrial activity.

The attempts at curbing concentration of economic power have been reduced to "curbing concentration that is detrimental to public interest" with very little thought being given to how this will be monitored on a continuous basis,

Worse, the long-term implications of allowing already dominant and/or business-house interconnected undertakings to undertake substantial expansion and/or set up new undertakings more often than not with foreign collaboration has deliberately been played down and/or sought to be remedied with certain modifications in the scheme of finance and equity participation without addressing oneself to the central issue of the potential danger inherent in concentrated economic power.

The grant of a license to Lucas-TVS for substantial expansion of products in which it already has a predominant position is a clear example of how apart from throwing the objective of curbing concentration of economic power to the winds even the long term interests of the country were accorded a secondary place.

In its examination of the proposal the MRTPC noted that Lucas-TVS occupies a predominant position in the production of electrical ancillaries which, enables it to operate as a monopolist in respect of its distribution and pricing policies. "The profitability of the company which is very high is also to a significant extent due to its monopolistic position. The maintenance of such a position cannot but lead to a continuance of the exploitation of the consumer and the market------. The expectation that collaboration with a major concern in this field would help build up exports has not only not materialised but there also seems to be little prospect of this happening on any significant scale in the future. It also appears that continuance of foreign collaboration by the company has resulted in the adoption of production techniques and process which are not necessarily the most appropriate ones if cognisance was taken of the availability of cheaper skilled labour in India as compared to capital. The representatives of the foreign collaboration pointed out at the public hearing that production could not be developed in India for export on the

ground that skilled labour was cheaper in India, because the production process adopted here were largely copied from the processes developed by them to suit British conditions. It is well known that continued dependence on foreign collaboration always makes it less worthwhile to develop indigenous R & D adequately. While the company has made commendable efforts in this direction; it is not unlikely, that as long as an elaborate arrangement for foreign collaboration continues, there would be less incentive to build up a vigorous R & D unit".[13/]

Inspite of admitting that dominance in the market has not resulted in other advantages to the economy such as lower prices to the consumer, or, development of exports, that the R & D efforts of the company is limited and that enough data exists to indicate that the company is able to exploit its monopolistic position, the MRTPC granted approval to the company's scheme of expansion after minor modifications in the scheme of finance, and marginal reductions in the quantum of expansion asked for.

Similarly, the investigation by the MRTPC of the electric lamp industry revealed how the industry is dominated by foreign companies both in the market for finished products as well as for components and raw materials. Yet short of suggesting whether or not licence should be approved or not, the MRTPC could not recommend any reorganisation of the industry and therein lies the weakness of the way the MRTP Act, 1969 has been conceived and made to operate.

"The Electric Lamp Manufacturers India Private Limited (ELMI) was formed in 1938 for the production of lamps by five foreign firms which were hitherto engaged in the import of lamps. Its technical management was vested in Philips (Holland). Hind Lamps Limited was formed in 1952-53 on the basis of a collaboration between Radio Lamp Works Limited

(later called Bajaj Electricals Limited) and the group of companies which had formed the ELMI, both these groups contributing 50 per cent each of the equity capital of Hind Lamps Limited. The participants in ELMI held their half share of equity in Hind Lamps in the same proportion as their equity holdings in ELMI. Till recently the technical management of Hind Lamps was also entrusted to Philips (Holland), the Managing Director of ELMI also being the Managing Director of this unit. Philips India Limited (PIL) itself undertook the production of electric lamps in India from 1962 as a result of its purchasing the lamp unit originally established by Osler Lamp Works.

The ELMI-Hind-PIL Group has dominated the lamp industry in the country for a long time. The economic features of this organisation are mass production of identical products and segregated distribution by the selling organisations of the parent companies in the country. The underlying motive of such an arrangement is to sustain the brand name of their previously imported lamps for sale in the country. The process of segregation for this purpose is done even at the manufacturing stage when the old brand names are stamped on the products, which cannot otherwise be differentiated technically as they are identical in all respects. The offtake of the output is in proportion to the financial contribution of the parent companies in the ELMI-Hind units.

Because of the share holding of Philips (Holland) in ELMI and Hind Lamps, PIL is able to secure supplies of lamps produced by these two companies-35 per cent of ELMI's and 17½ per cent of Hind Lamp's annual production. These supplies along with its own production are marketed by PIL under its own brand name 'Philips'. In this manner, it is claimed, PIL accounts for 29 per cent and 51.9 per cent of the total sales in respect of GLS lamps and FT lamps respectively.

Philips India Limited is the largest manufacturer of raw materials and components required for the manufacture of GLS and FT lamps. Many other lamp manufacturers depend upon PIL for their supplies of raw materials and components. Several objectors have referred to a gradual decline in the supply of components by PIL.

It has also been pointed out that the prices of raw materials and components have been increased by PIL frequently, whereas the lamp prices have not been raised in the same proportion. Such pricing policy by PIL is said to have threatened the very existence of the smaller units. PIL is said to enjoy almost a monopoly position in some of the parts and components required for the manufacture of GLS and FT lamps. As a consequence of this position, the company, it is said, manoeuvres the supplies in such a way as to make maximum profits.

The existing production of PIL is much above licensed capacity. The excess production over and above the licensed capacity for GLS lamps and FT have been achieved by PIL in view of the facilities, installed by them for production of lamp components. They are obtaining import licences for import of raw materials for their GLS and FT plants and also they are obtaining actual users import licences for import of raw materials for their components factory at Kalwa, Bombay. Major portion of the components are being used for GLS Lamps, F Tubes and Mercury Vapour lamp production facilities installed at their Calcutta factory. In other words, they are able to obtain import licences to achieve much higher production in the above manner whereas other lamp manufacturers are unable to achieve a higher production due to restrictions on import licences for raw materials and components."[14]

In a subsequent section we will see how the monopolistic position of ELMI-Hind Lamps-PIL enables them to exploit their dominancy in the market. While the MRTPC recommended the expansion proposal of PIL, subject to certain conditions involving exports and the regularisation of unauthorised capacity, the Central Government rejected the expansion proposal of PIL. But neither the MRTPC nor the Central Government thought it necessary in the interests of "curbing of concentration of economic power" to reorganise the industry in the light of the material gathered by the MRTPC on the structure of the industry.

In a few cases there have been disagreements among MRTPC members regarding how to treat applications from undertakings interconnected with large business houses. For instance, when TELCO applied for an expansion of its capacity for commercial vehicles, Dr.H.K.Paranjape, one of the members of the MRTPC wanted to go into the whole question of interconnection of TELCO with the Tata Group of Companies. Paranjape argued"------the purpose of looking into this question of TELCO's interconnection with other Tata companies was to examine what conclusions could be drawn regarding the impact of approving TELCO's expansion on the economic power of the Tata House. The impact of this expansion will not only be that TELCO's domination of the commercial vehicles industry will increase even further but also that a built in mechanism for its further domination of that industry will be, --- The concentration of economic power that has been represented by a business group may not in the past have been specifically used to the public detriment but it is always potentially available for such misuse. The larger the company or the group, the greater the potential danger."15/

The rest of the commission differed with Paranjape and agreed with the Chairman of TELCO that TELCO was a limited

liability public company and as such a legal entity in itself. The approach of the majority of the members of the commission was to examine whether the applicant company had in the past made a positive contribution to the national economy, whether it had achieved technical efficiency in its production, whether it gave the consumer a reliable product, whether it gave the consumer good after sales service and whether the company had exploited its monopoly position in the market.[16/]

In a similar manner when T.V.Sundaram Iyengar and Sons Limited applied to the Government for setting up a new undertaking for the manufacture of organic automotive, non-automotive and friction material, the majority of the commission did not deem it essential to go into the question of what would be the implications for concentration of economic power if the proposal is approved given that the business house of T.V.Sundaram Iyengar and Sons is already vertically, integrated as far as automobile components and accessories are concerned. The approval was granted with insignificant conditions attached to the proposal.[17/]

We have highlighted only a few of the detailed cases published. But these are typical of the manner in which the MRTPC has gone about its task of "curbing concentration of economic power". Notwithstanding the verdict that the MRTPC has pronounced on the proposals referred to it, what is relevant to our analysis is the detail provided by the MRTPC in each enquiry which gives an idea of the manner in which a particular industry is organised, a particular business-house is structured, how seemingly independent undertakings are held together and associate in chalking out common production programmes, marketing arrangements, etc. While pursuit of details regarding ownership, control, management, etc., may appear to the majority of the commission as "born out of doctrinaire and out dated opinions"[18/] it is precisely this kind of information that is imperative for an understanding of the emerging concentrated industrial structure.

Section II

In this section we examine the cases of monopolistic and restrictive trade practices, instituted by the commission. While this does not purport to be an exhaustive list of the cases enquired into so far, our main aim will be to investigate in detail some of the cases which are typical of the rest in order to establish a link between the kind of concentrated industrial structure that is emerging and the behaviour of firms functioning within this structure.

Monopolistic Trade Practices

While Section 10 (b) of the MRTP Act, 1969, empowers the commission to inquire into any monopolistic trade practice upon a reference made to it by the Central Government or upon its own knowledge or information, unfortunately follow-up of this power has not been clearly stated in Section 31 of the Act, which section only postulates that the same will be enquired into by the commission on a reference made to it by the Government. Thus the power of the commission to inquire into monopolistic trade practice has not been practically exercised and has remained almost dormant in as much as only one inquiry into monopolistic trade practice has so far been instituted by the commission on its own. Since the passing of the Act, the Government itself has referred only 3 cases under Section 31, namely, Coca-Cola Export Corporation (July 1973), Cadbury-Fry (India) Limited (March 1974) and Colgate Palmolive (March 1974), Proceedings into these cases could not be taken up because of the stay granted first by the High Court and later by the Supreme Court. The one and only suo moto enquiry instituted by the commission against Avery India Limited was challenged by the company on the ground that it (that is, the company) was neither a dominant nor a monopolistic undertaking and that

the commission had no jurisdiction to conduct the inquiry. Further proceedings have been stayed by an order of the Supreme Court. The commission's efforts to curb monopolistic trade practices in India have been infructuous. "In developing countries such as India where markets for certain commodities and services are limited while the number of undertakings which can produce such commodities or services is small either because of economies of scale, or, because technical collaboration is required and this is available only from particular sources the possibility of monopolistic situations existing and therefore monopolistic practices being indulged in is considerable. The fact that in the Act there was no effective provision for the commission to take up suo-moto enquiries, combined with the failure of Government to make many references to the commission, resulting in these provisions remaining almost totally inoperative".[19]

Restrictive Trade Practices (RTPs)[20]

The part relating to RTPs has been the most effective part of the Act if one goes by the number of cases that have been handled by the commission since its inception. The commission has an autonomous status in matters relating to the prohibition and c ntrol of RTPs. The procedure for conducting a RTP inquiry has been prescribed by the commission under the MRTP regulations, 1974. In a RTP inquiry the commission's order is final subject only to appeal to the Supreme Court.

The Commission may inquire into any restrictive trade practice.

i) Upon receiving a complaint of facts which constitute such practice from any trade or consumers association having a membership not less than twenty five persons or from twenty five or more consumers,

ii) a reference made to it by the Central Government or a State Government,

iii) an application made to it by the Registrar, or

iv) its own knowledge or information.

From its inception in August 1970 till July 31, 1980, the commission instituted 351 RTP inquiries. Of these, the commission passed final orders in 285 inquiries.

A major source of instituting RTP inquiries by the commission has been the applications of the Registrar made under Section 10(a) (iii) of the Act. Out of the 351 inquiries instituted 134 (38.2 per cent) were initiated on applications of the Registrar. The largest number of inquiries, namely, 201 (57.2 per cent) were initiated by the commission on its own knowledge or information, that is, suo-moto.

During the period of ten years, the supreme court decided three appeals filed before it against the commission's orders in RTP inquiries. These appeals were filed by TELCO, Hindustan Lever and Mahindra and Mahindra. In the TELCO case, the supreme court rejected the commission's findings, that, in the particular circumstances of the case territorial restriction and exclusive dealership amounted to restrictive trade practices. In the Hindustan Lever case, the commission's cease-and-desist order against the practice of area restriction, resale price maintenance and full-line forcing was upheld by the supreme court. In the Mahindra and Mahindra case the supreme court reaffirmed its judgement as in the TELCO case. These three judgements are important land marks relating to RTPs in India since the supreme court held that any trade practice covered under any of the clauses of Section 33(1) was not a restrictive trade practice per se unless it was also established that a particular act, contract,

or agreement imposing the restraint is unduly restrictive of competition so as to constitute 'restraint of trade'. The commission's thinking has been greatly influenced by the supreme court decision in the TELCO case. In a number of cases subsequently decided by the commission, it has held that in the particular circumstances of the case the impugned practice did not amount to a RTP.

Some of the notable points emerging from the commission's orders in RTP cases have been:-

i) newspapers not to insist on advertisements in all editions if an advertiser did not want to do so;

ii) Caustic soda producers to make available their product to new consumers and not confine supplies to old ones on the basis of previous off-take;

iii) removal of oppressive terms in warranties given by producers of items like refrigerators; stoppage of a concerted service charge being levied by petrol-dealers;

iv) eight tyre manufacturers to strike down a 'code of conduct' which had been entered into by them and which provided for various restrictive trade practices such as price maintenance, distribution of markets and the like;

v) ten major manufacturers of paper restrained from changing the production pattern of paper by acting in concert or otherwise which adversely affected the flow of supplies of ordinary printing and writing paper to the market;

vi) two manufacturers of pressure cookers were desisted from forcing pressure cooker buyers to buy separators also;

vii) eight leading manufacturers of viscose filament yarn were desisted from collusive price fixing and withholding of output/supply;

viii) eight distributors of steel pipes who were indulging in certain discriminatory, practices, were ordered to follow a scheme of distribution introduced by the commission.

Following the supreme court's order in the TELCO case, which set aside the MRTPC's ruling on the subject, not every trade practice that involves a restriction as to area or price is considered a RTP. Exceptions are made depending on the answers to the following three questions:

a) What facts are peculiar to the business to which the restraint is applied;

b) What was the condition before and after the restraint is imposed;

c) What is the nature of the restraint and what is its actual and probable effect.

Thus the decision whether a trade practice is restrictive or not has to be arrived at by applying the rule of reason and not on the doctrine that any restriction will per se be a RTP.

We now move to a somewhat detailed examination of a few of the RTP cases that are typical of the rest of the cases investigated by the MRTPC.21/ Our main concern here is not really what action the MRTPC has taken consequent upon its findings; rather, the findings of the MRTPC in the course of the examination of the cases throw light on the linkage between the structure of the industry as it exists and the behaviour of firms in that industry.

a) 8 leading tyre manufacturing companies had entered into an agreement called "General Code of conduct for members of the automotive tyre industry of India" (GCC). Among other things the GCC provided for limiting output and production range of and arranging the pattern of production of tyres in a mutually agreed manner, removal of manufacturer's name from products sold as "seconds", mutual manufacture of ranges, new sizes, experimental metallic, semi metallic second-line tyres etc., and prohibiting branding of tyre to customer's specifications, hampering research and development of tyre industry. It further provided for resorting to agreed distribution system, restricting appointment of dealers individually by any of the respondents, restricting supplies to account customers other than as per agreed list, collective acceptance and adoption of uniform qualifications for inclusion in the fleet owners' list, confining supplies of certain kinds of tyres and equipment to agreed categories of persons, prohibition of transfer of territory from one district/depot to another, collective boycott of dealers/customers, restrictions relating to policy, programme, method and place of advertisement. Agreement also provided for prohibiting any of the respondents from employing staff of his competitors.[22/]

Going back to the structure of the tyre industry[23/] we find that between 1964 and 1980, the structure of the industry has changed from a monopolistic one to an obligopolistic one. Dunlop India Limited, the leading producer in 1964 with slightly over 40 per cent of the market has been facing effective competition from Ceat, Good Year, MRF, Modi Rubber. Oligopolistic industries employ various ways to coordinate their pricing decisions in the market; outright price-fixing agreements and cartels, price leadership and patterns of tacit collusion. The elaborate agreements entered into by the leading tyre companies as spelt out in their

GCC, reflect the attempt by them to maintain prices and profits by regulating production, supply and distribution. It is a clear attempt at cartelization on the part of the tyre companies in the absence of which cut-throat competition would have spelt the ruin of all of them.

Subsequent to the above restrictive trade practices enquiry, there have been several others instituted against several of the above leading companies again charging collusion on the part of these producers of automotive tyres.24/

b) Mention has already been made in the previous section of the manner in which the electric lamp industry is organised with the industry being dominated by the ELMI-Hind Lamps and PIL, with PIL controlling the production and the appointment of factory managers in ELMI and Hind Lamps. The foreign companies that had promoted ELMI entered into an agreement with ELMI for a common lamp manufacturing programme. The said agreement was registered with the Registrar. The later submitted to the commission that by virtue of the agreement the respondents are indulging in restrictive trade practices of the following nature:-

i) restricting persons/parties from whom goods are bought and or to whom goods are sold;

ii) entering into understanding/arrangement to sell goods only at agreed terms, conditions, and prices thereby eliminating competition or a competitor;

iii) agreeing to purchase goods only at prices and on terms and conditions agreed upon;

iv) restricting output and supply of electric lamps and components thereby imposing unjustified costs on the consumers, and

v) restricting employment of any method, machinery or process in the manufacture of goods produced by ELMI.25/

Thus not only does the lamp industry present a picture of a concentrated industrial structure with seemingly independent undertakings being infact interconnected but this structure has facilitated collusion aimed at perpetuating a monopolistic position.

c) How monopolistic undertakings are in a position to abuse their dominant position in the market is clear from the cases of Grindwell Norton and Carborandum Universal. Between the two of them they control slightly over 94 per cent of the market in Grinding Wheels. In order to keep this share intact, the two companies, who also control production of the raw materials needed for the end product, sell to each other the bulk of the raw material at the lowest possible cost by means of a slab system which ensures lower prices for purchases of larger quantities. The result is that purchasers of small quantities who are invariably small-scale producers are put at a gross disadvantage having to pay relatively higher prices for purchases of smaller quantities.26/

d) It is a known and acknowledged fact that in many cases (specially in the case of consumer products), the organised large-scale sector buys up the production of the small-scale sector to be sold through its (large-scale sector's) own retail and wholesale outlets under its own brand name. The case of Bata reveals the conditions under which such arrangements take place. While Bata cannot be faulted for requiring small-scale manufacturers (with whom it had entered into production arrangements) to manufacture footwear according to certain specifications and of a particular quality, its (Bata's) terms and conditions went beyond these to almost, stifle independent production and distribution

in the small-scale sector. For example some of the clauses of the Agreement that Bata had with the small-scale manufacturers:

i) binded the manufacturers to enter into a fresh agreement in the event of enhancement of their production capacity;

ii) prevented and restricted the manufacturers from selling their additional production arising out of the enhanced capacity to a party other than the company;

iii) required the manufacturers to sell the quantity of footwear surplus to the company's requirements only to persons approved by the company;

iv) required the manufacturers to sell all the moulds to the company in the event of termination of the agreement;

v) required the manufacturers to sell such quantity of footwear as may be surplus to the requirements of the company only at prices approved by the company.[27/]

e) The terms of the collaboration agreement between Sarabhai M Chemicals and E.Merck, highlight another form in which a dominant undertaking can reap monopolistic profits (specially in times of shortages). The agreement prevented E.Merck from divulging its know-how in the manufacture of a wide range of pharmaceuticals (a total of 598 listed items) to any manufacturer other than Sarabhai. The agreement enabled Sarabhai, the only manufacturer of "Vitamin C" to exploit the extreme shortage that developed in the early seventies. Further out of 598 listed items, Sarabhai manufactured only 76 items. Not only did Sarabhai not manufacture the rest of the listed items but also put a complete embargo on further flow of know-how into India for as long a period as 10 years.[28/]

f) A major part of the cases dealt with by the MRTPC relate to restrictive trade agreements entered into by manufacturers with their dealers/stockists. More often than not these agreements reveal the hold that companies, because of their dominant position in the market have over the mode of functioning and method of business of the dealers. The cases of Hindustan Lever and Philips India are illustrative of such control. Lever in its agreement with the redistribution stockists firstly indicated that stockists will have to sell only at prices indicated by the company and not lower; the stockist could not choose from among the range of products produced by the company but had to accept whatever the company handed down. There were also restrictions on the area/territory beyond which a stockist could not dispose off his goods. In the case of Philips India, the restrictions on dealers activities took the following forms: Philips compelled its dealers to become members of one of the Associations of Dealers (formed by Philips) representing different regions. These Associations fix prices and discounts, frame bye-laws, lay down procedures for enforcements of rules, impose penalties for breach of rules etc.[29/]

g) In a case against ITC and Vazir Sultan Tobacco Company (VST) it has been alleged that ITC, a monopolistic undertaking is getting some of its brands manufactured by VST and some other small manufacturers paying them varying rates; that ITC controls a significant part of the sales and distribution of VST's production etc. In our study on concentration in terms of production, we had pointed out the interconnections that exist between ITC and VST, namely, that both ITC and VST were originally under the majority equity control of the subsidiaries of the British American Tobacco Company. Several business connections have therefore existed between the two companies. Seen in this light, the

allegations set out in the enquiry only reinforce the strength of these interconnections and are meant to perpetuate their monopolistic hold over the cigarette industry.[30]

Concluding Observations

Notwithstanding the limited coverage of the MRTP Act, 1969, (in terms of the number of undertakings under its purview), notwithstanding the fact that almost no powers have been granted to the MRTPC under Chapter III of the Act (which chapter is the heart and the raison d'etre of the whole Act), namely, the chapter dealing with concentration of economic power, nevertheless, the data so far recorded by the MRTPC under its various heads do provide a glimpse of the manner of functioning of the organised industrial sector of the economy. One of the major weakness of the Act that has been repeatedly pointed out with no avail is the inability of the MRTPC to take up the question of interconnection of undertakings for want of adequate powers under the Act. As a result, whether the grant of a particular licence to an undertaking (either for expansion or setting up of a new undertaking) will lead to vertical/ horizontal integration, what links the undertaking in question has with a particular industrial group/groups--------- questions that will highlight the structure likely to emerge in a particular industry if the licence is granted, cannot be gone into adequately. Consequently, the manner of functioning of the industrial policies of the country including the MRTP Act, 1969, have aided and abetted the perpetuation of a concentrated structure in industry, which in turn has made the field ripe for the practice of various kinds of abuses.

That the coverage of the MRTP Act is very limited which is further constricted by the non-reference to the MRTPC in as much as 92 per cent of the cases of substantial expansion

and/or setting up of new undertakings by MRTP companies has been well documented by the Sachar Committee. Further, the unauthorised installation of capacity and its periodical authorisation by the Government (considered by the Government as applications under Section 21 of the Act for MRTP companies) has become a ritual. This whipsaw treatment of Government by the companies is again evident by their ability to install wholly new undertakings without the approval of MRTPC/Central Government, Nay, in one case, the company has been able to convince the Government that it had acted under a bonafide belief that the provisions of Section 22 of the Act were not attracted. And, sure enough, the Government, true to its character, has swallowed the explanation, hook, line and sinker. In most other cases the companies have got away with a mere warning.[31]

The subsequent amendments to the MRTP Act by the Government have further diluted the provisions and powers of the MRTPC and has rendered the Act almost infructuous. Notable among these amendments are the changes in the definition of a "dominant" undertaking and the latest upward revision of the asset norm from the existing Rs.20 crores to Rs.100 crores.[32]

The shortcomings of the functioning of the MRTPC notwithstanding, its findings nevertheless give a clue to the kind of industrial organisation existing and emerging. There is express need in the first place to understand the structure of Indian industry in terms of its organisation into various business groups; the manner in which companies/firms within groups are interconnected, the linkages between business groups etc. The onus of registering a company under the MRTP Act rests on the company itself so also the fact of its being interconnected with an industrial house identified as such by the MRTP Act. Consequently a large number of undertakings over the years have evaded registration. Further, decisions regarding interconnections are taken strictly in

accordance with existing statutory provisions as laid down in the MRTP Act. Consequently, by say, merely reducing their share holding companies can escape the charge of interconnection.33/

In our analysis of the working of the licensing system34/ we had pointed out that apart from the fact that already established undertakings had been given considerable extensions in their capacities, multiple applications by the same Business House for the same product had also been approved. Thus far, the granting of licences for substantial expansion, setting up of new undertakings etc., have been on a company-by-company basis on the assumption that the company is a legal entity and has an independent existence of its own. Our submission is that any attempt at understanding the problem of concentration/monopoly in the economy must start first by unmasking the so-called independence of the company. The investigations of the MRTPC have themselves laid bare the numerous interconnections between legally independent public limited companies.

Such investigations would necessarily lead to the requirement that pattern of investment and composition of output be dictated by a rationality that is totally alien to a private enterprise system. As long as a Government is unable to supersede private enterprise, it cannot prevent the emergence of irrational productive structures, much less would it be able to tackle effectively the irrational behaviour stemming from such structures. As Joan Robinson has aptly said, ... "any Government which had both the power and the will to remedy the major defects of the capitalist system would have the will and the power to abolish it altogether, while governments which have the power to retain the system lack the will to remedy its defects".35/

****

Notes and References

1. Swaminathan, Padmini : "A study of product-concentration in Indian Industry-A Statistical Analysis of Structure, Working Paper No.36, Madras Institute of Development Studies, September 1983.

2. - do - : "Concentration of Productive Capacity". Working Paper No.45, Madras Institute of Development Studies, December 1983.

3. The Union Budget for 1985-86 has raised the asset limit in respect of MRTP Companies from Rs.20 crores to Rs.100 crores.

4. Paranjape, H.K., : Control in India of Restrictive Business Practices, United Nations, 1978, p.3.

5. - do - : Ibid, p.3-4.

6. India, Government of, : Report of the High Powered Expert Committee on Companies and MRTP Acts, Ministry of Law, Justice and Company Affairs, New Delhi, 1978, p.251.

7. Paranjape, H.K., : Op.cit, p.5.

8. For details of this case refer Khurana, Rakesh., : Impact of MTRP Act on Concentration of Economic Power: An Empirical Study, Thesis submitted to Gujarat University for the Degree of Doctor of Philosophy in Economics, March 1979, pp.151-164.

9. Ibid, : p.164

10. Reference under Section 27 dated 22 May 1974 in respect of M/s.Andhra Prabha (P) Ltd., the Indian Express Newspapers (Bombay) Pvt. Ltd., and the Indian Express (Madurai) Pvt. Ltd.

11. Reference under Section 27 dated 22 May 1974 in respect of M/s. Jiyajeerao Cotton Mills Ltd., quoted in Paranjape, H.K., op cit., p.8.

12.	India, Government of.,	: Reports of the MRTP Commission and Orders Thereupon of the Central Government under Section 21, 22 and 23 of the MRTP Act, 1969 Volume II (Section 21) Volume IV (Section 22) (Volumes I, III & V not yet published) Ministry of Law, Justice and Company Affairs, July 1981.
13.	- do -	: Ibid., Volume II (Section 21), pp. 27-28.
14.	- do -	: Ibid, Volume II (Section 21) pp.85-209 (summarised).
15.	- do -	: Ibid., Volume II (Section 21) pp.358-359.
16.	- do -	: Ibid, Volume II (Section 21) p.275 and 278.
17.	- do -	: Ibid, Volume IV (Section 22) p.539-595.
18.	- do -	: Ibid, Volume II (Section 21) p.279.
19.	Paranjape, H.K.,	: Op.cit, pp.10-11
20.	For an exhaustive study of RTPs refer	:
	a) Verma, D.P.S.,	Restrictive Trade Practices in India, Himalaya Publishing House, Bombay 1984.
	b) India, Government of.,	: Restrictive Trade Practices in India, Volume I-III, Ministry of Law, Justice, and Company Affairs, New Delhi 1978.
	c) Rajendra	: Case Book of MRTP cases Taxman Publications, New Delhi, 1981.
21.	Details of the cases have been taken from India, Government of.,	: Restrictive Trade Practices in India, Volumes I-III, Ministry of Law Justice and Company Affairs, New Delhi, 1978.

22\. Restrictive Trade Practices Enquiry (RTPE) No.1 of 1971.

23. Swaminathan, Padmini : "A study of Product-Concentra-tration in Indian Industry op.cit., September, 1983.

24. RTPE 6 of 1978, 13 of 1978, 11 of 1978.

25. Notice of Enquiry dated 22.2.1975.

26. RTPE 28 of 1974 (Carborandum Universal Ltd).
RTPE 29 of 1974 (Grindwell Norton Ltd).

27. RTPE 3 of 1974.

28. RTPE 45 of 1975.

29. RTPE 11 of 1974 (Hindustan Lever Ltd)
RTPE 26 of 1975 (Philips India Ltd)

30. RTPE No 6 of 1974.

For details of inter-connection see Swaminathan, Padmini : "A study of Product-concentration in Indian Industry", op.cit., September 1983.

31. For details of the cases refer reply given in Rajya Sabha to unstarred question No.543 on 4th August 1980. Quoted in Company News and Notes, Vol XVIII, August 1980, No.8, pp.54-56.

32. For the purpose of "dominance" undertakings have been classified into four distinctive groups, namely:

i) undertakings which come within the purview of the Industries Act and have a licensed capacity for the production of goods of any description;

ii) undertakings which come within the purview of Industries Act and have no licensed capacity;

iii) Undertakings which are out side the purview of Industries Act and have no licensed capacity;

iv) undertakings which provide services

In the case of (i) above, the test for dominance is that, the licensed capacity of a single undertaking or the aggregate of the licensed capacity of inter-connected under-takings, as the case may be, should not be less than 25 per cent of the total installed capacity if the licensed capacity of an undertaking is compared with the total installed capacity in the country.

In the case of (ii), (iii) and (iv) above, there is no change in the test for their dominance except that the determinant has been reduced from 1/3rd to 1/4th share of the undertaking in the production, supply, distribution or control of goods of any description or provision of service of any kind.

For details on the upward revision of the asset limit see Union Budget for 1985-86.

33. For examples, see Swaminathan, Padmini : "A study of Product-Concentration in Indian Industry", op.cit., September 1983.

34. Swaminathan, Padmini : "Concentration of Productive Capacity", op.cit., December 1983.

35. Robinson, Joan., : Economic Journal (December 1936) P.693. Quoted in Baran, Paul., The Political Economy of Growth, Reprinted 1976, Penguin Books Ltd, Harmondsworth, p.264.

****